

EXHIBIT 1-A

TSEP CONTRACT FOR CONSTRUCTION GRANTS

TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-CG-08-_____

FOR _____, MONTANA, _____ PROJECT

This Contract is entered into by _____, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

Section 1. PURPOSE

The purpose of this Contract is to provide funding for project activities approved by the 60th Montana Legislature through House Bill 512 under the Montana Treasure State Endowment Program (TSEP) for Fiscal Years 2008 and 2009.

Section 2. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for TSEP assistance is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

Section 3. ASSURANCES

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees that all contracts entered into by it for the completion of the activities described in Section 5 of this Contract will contain special provisions requiring contractors to comply with all applicable state requirements.
- (c) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or

any public or private agent or agency to which the grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing TSEP.

Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect upon execution by the parties and will terminate upon completion of the final project closeout by the Department. The activities to be performed by the Grantee will be completed according to the implementation schedule included as Attachment A to this Contract, which by this reference is incorporated herein. The Department may request a revised implementation schedule when deemed appropriate.

Section 5. SCOPE OF WORK

- (a) The Grantee will engage in activities as set forth in the Grantee's application for TSEP grant assistance **[and as supplemented with additional information dated ____]** which by this reference **[is] [are]** made a part of this Contract. The major components of the project include: _____, and the administration of this Contract.
- (b) The project will be constructed as described in engineering plans and specifications submitted by the Grantee **[and approved by the Montana Department of Environmental Quality]**.
- (c) In order to meet the expectation that the average residential **[water] [wastewater] [combined water and wastewater]** user rates will be at or above the Grantee's target rate as proposed in the TSEP application submitted by the Grantee, the Grantee will maintain average residential **[water] [wastewater] [combined water and wastewater]** user rates upon the completion of the project that are no lower than \$____/month for residential users.

Section 6. BUDGET

- (a) A copy of the preliminary project budget, which is binding upon the Grantee, is included as Attachment B to this Contract, and by this reference is incorporated herein. After construction bids are awarded or other major project activity cost elements are determined, the Grantee will provide the Department with a revised project budget.
- (b) Budget adjustments must be approved in advance by the Department. For adjustments between line items of the TSEP portion of Attachment B, in an amount

not to exceed \$5,000, Department approval of the Request for Payment form will constitute approval of the budget adjustment. The Grantee shall describe the rationale for a budget adjustment in the Project Progress Report and the adjustments noted in the request for Payment and Status of Funds Report submitted with draws against the grant funding reserve. Budget adjustments in excess of \$5,000 are subject to written Department approval.

Section 7. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds deposited in the Treasure State Endowment Special Revenue Account as authorized by 17-5-703 and 90-6-701 through 90-6-710, MCA, and appropriated by the 60th Legislature in House Bill 512. Only the interest earned during the 2009 biennium on the Treasure State Endowment Fund will be available to fund projects authorized by HB 512. If the interest earned is insufficient to fund all projects that completed the "Project Start-Up Requirements," as discussed in Section 8, by June 30, 2009, the Department will borrow funds from the Board of Investments to provide grants to those Grantees that completed "Project Start-Up Requirements" by June 30, 2009. The Grantee acknowledges that its access to TSEP funds is subject to their availability.
- (b) The Grantee agrees that if it has not completed the "Project Start-Up Requirements" by the end of the biennium on June 30, 2009, the Grantee loses any guarantee of receiving the authorized grant, and will be provided funds only if there is interest earnings available that have not been obligated to other authorized projects. The Grantee agrees that the Department will not borrow any funds from the Board of Investments to provide grants to Grantees that meet "Project Start-Up Requirements" after the biennium ends on June 30, 2009.
- (c) The Grantee acknowledges that it is subject to the conditions on grant award, disbursement of funds, and other TSEP policies as established by the 60th Legislature in House Bill 512.
- (d) The Department agrees that, if and when coal tax revenues are available, it will reimburse the Grantee for successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses as provided in this Contract. The Department will authorize the Grantee to draw up to \$_____ against the TSEP funding appropriated for the Grantee's project by the 60th Legislature. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (e) The Department will reimburse the Grantee for approved eligible expenses according to the documentation submitted by the Grantee to support the

expenditures. The Department will not reimburse the Grantee for any expenses not included in the approved budget and not clearly and accurately supported by the Grantee's records. No expenses will be reimbursed that were incurred prior to July 1, 2007, with the exception of reasonable expenses incurred attending the TSEP project administration workshop. Any authorized funds not expended under this grant will revert to the Department and will be used to finance other authorized TSEP projects.

- (f) Reimbursement of eligible costs is contingent upon the Grantee's satisfaction of the "Project Start-Up Requirements." If the Grantee is unable to comply with the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.
- (g) The Grantee may, at its discretion, incur eligible costs in furtherance of the project before the Department has issued a "Notice to Proceed," which notifies the Grantee that TSEP funding is available; however, any costs incurred before the "Notice to Proceed" is issued will be the Grantee's sole responsibility if the Grantee is unable to comply with the terms and conditions of this Contract.
- (h) If the Grantee changes one of its sources of funding, or if the cost of the project increases, after the Grantee has obtained the firm commitment of non-TSEP funds, and so that additional funding is required from existing or new sources, the Department may, at its discretion, withdraw the "Notice to Proceed," thereby suspending distribution of TSEP funds until once again there is a firm commitment of funds for the project.
- (i) The Grantee understands that the Department refers all uncompleted projects back to the Legislature for its consideration of whether to withdraw the funding for projects. Furthermore, if the Department determines that the Grantee has failed to commence or complete its project in a timely manner, the Department will refer the project back to the Legislature for its consideration of whether any remaining funds should be re-allocated to other TSEP projects.
- (j) Until all tasks outlined in Section 5. SCOPE OF WORK are completed and approved by the Department, the Department will hold two percent (2%) of the total authorized grant amount as surety. Within 90 days after the Certificate of Substantial Completion being issued, the Grantee will prepare and submit to the Department a Project Completion Report in the form prescribed by the Department. The Department will disburse the retainage upon receipt and approval of the Grantee's Project Completion Report. If the Grantee fails to submit a Project Completion Report within the 90 days, the Department may refer the project back to the next session of the Legislature for its consideration of whether these remaining funds should be re-allocated to other TSEP projects.

- (k) If the actual total cost of completing the project is less than was projected by the Grantee in the Preliminary Project Budget (Attachment B), the Department may, at its discretion, reduce the amount of TSEP funds to be provided under this Contract in proportion to the overall savings. If actual construction bids are less than the estimates included in the Preliminary Project Budget, the construction portion of the budget in the Final Project Budget must be established at no more than the bid price. Any savings will be added to the amount budgeted for contingencies under the contingency line item.
- (l) If actual project expenses are lower than the projected expense of the project as presented in the TSEP Application, the Department may, at its discretion, reduce the amount of TSEP grant funds so that the projected average residential user rate does not fall lower than the target rate.
- (m) The difference between actual project costs and the original grant award, or any reduction in the funds provided as discussed in subsection (k), may, at the Department's discretion, be used either to fund other TSEP projects, or to fund activities not originally proposed in the Grantee's TSEP Application as long as those activities are reasonably related to the original project.
- (n) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.

Section 8. PROJECT START-UP REQUIREMENTS

The Department will not reimburse the Grantee for any activities provided for by this Contract until:

- (a) The Grantee submits to the Department evidence of the firm commitment of the other funding necessary for the completion of the project as listed in Attachment B.
- (b) The Grantee submits to the Department an acceptable Project Management Plan.
- (c) The Department confirms that the Grantee:
 - (i) has established a financial accounting system that conforms to generally accepted accounting principles (GAAP), and
 - (ii) is in compliance with the auditing and reporting requirements provided for in 2-7-503, MCA. ***(Substitute the following for contracts with Tribal***

governments.) is in compliance with auditing and reporting requirements provided for in OMB Circular A-133.

- (d) The Grantee complies with any special conditions recommended by the Department and approved by the 60th Legislature.
- (e) The Department issues a Notice to Proceed.

Section 9. PROJECT PROGRESS REPORTING

- (a) During the term of the Contract, the Grantee will submit quarterly project progress reports to the Department for the periods ending March, June, September, and December. These reports will describe the status of each project implementation objective including, at a minimum, the percentage complete, costs incurred, funds remaining, and projected completion date. In these reports the Grantee will note any significant problems encountered in carrying out the project and any modifications the Grantee is requesting in the scope of the project or the project implementation schedule.
- (b) The Grantee will submit its project progress reports to the Department within 15 days of the close of each quarter. The Department, at its discretion, may decline to honor any claim for payment if the required quarterly report has not been approved or if a quarterly report is delinquent. Project Progress Reports submitted during a quarter, in conjunction with a Request for Payment, will satisfy the quarterly progress reporting requirement.

Section 10. LIAISON

_____, TSEP Program Specialist, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. _____, _____, is the Grantee's liaison with the Department.

Section 11. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in _____, Montana.

- (b) The Grantee will retain all of the project related records for three years after the final closeout of the TSEP grant.
- (c) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, thereby providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

Section 12. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Contract will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

Section 13. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

(Substitute the following for contracts with Tribal governments.) The Grantee agrees that none of its employees, officers or agents will participate in the selection of a contractor to perform work under this Contract or in the award or administration of a contract to be funded under this Contract if a conflict of interest, real or apparent, would arise. A prohibited conflict would arise if:

- (a) The employee, officer, or agent,
- (b) Any member of his or her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the persons described above,

has a financial or other interest in the firm selected for award.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or

potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

Section 14. PROPERTY MANAGEMENT AND EQUIPMENT

Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or subgrantee respectively.

Section 15. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

Section 16. MODIFICATION OF CONTRACT

This Contract may not be enlarged, modified, or altered except upon written agreement, and does not express or imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

Section 17. ASSIGNMENT, TRANSFER AND SUBCONTACTING

The Grantee shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Department.

Section 18. HOLD HARMLESS AND INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipient's performance under this Contract.
- (c) The Grantee agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their

duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

Section 19. DEBARMENT

The Grantee certifies that it will only enter into a contract or agreement with a Contractor that certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, it will attach a written explanation for review by the Department.

Section 20. CONTRACT AMENDMENT

- (a) The Department will consider requests by the Grantee to amend this Contract. However, before the Department will approve an amendment, the Grantee shall clearly demonstrate that the modification is justified and will enhance the overall impact of the original project.
- (b) If it determines that the proposed amendment represents a substantial change in the project activities proposed in the original application for TSEP funds, the Department may, at its discretion, require the Grantee to hold a local public hearing on the amendment after giving reasonable notice of the hearing.
- (c) The Department will not approve significant amendments to the scope of work or budget that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Governor and the 60th Legislature.
- (d) The Grantee understands that if it makes a significant change in the scope of work or budget that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Governor and the 60th Legislature, TSEP funding may be suspended until the next session of the Legislature when the proposed change would be presented to the Legislature for its review and approval or disapproval.

Section 21. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination Due to Loss of Funding. The Grantee understands that TSEP funds are provided by mineral taxes and that a decline in revenues produced by these taxes may preclude funding this Contract in whole or in part. If revenues do decline, the parties agree that the Department may terminate this Contract, and, if sufficient TSEP funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Grantee of the effective date of a termination or, if a reduction in funding is required, the change in funding and changes in the approved budget.
- (b) Termination Due to Failure to Meet Start-up Requirements by June 30, 2009. The Grantee understands that if it has not completed the "Project Start-Up Requirements" by the end of the biennium on June 30, 2009, the Grantee loses any guarantee of receiving the authorized grant, and will be provided funds only if there is interest earnings available that have not been obligated to other authorized projects. The Grantee understands that the Department will not borrow any funds from the Board of Investments to provide grants to Grantees that meet "Project Start-Up Requirements" after the biennium ends on June 30, 2009.
- (c) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (d) Termination Due to Adverse Environmental Impact. This Contract may be terminated if the Grantee or the Department determines that the project would have a significant adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.
- (e) Effect of Termination. In the event of termination due to the Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the

extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 22. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Grantee accepts responsibility for the adherence to the Montana Workers' Compensation Act by subcontractors or subrecipient entities and shall ensure that all subcontractors or subrecipient entities provide proof of workers' compensation insurance or exemption from the need for such insurance while performing work under this Contract. Neither the Grantee nor its employees are employees of the State.

Section 23. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 24. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

Section 25. INCONSISTENCY WITH APPLICATION GUIDELINES

In the event of inconsistencies or contradiction between language contained in the Department's TSEP Application Guidelines and a Grantee's response, the language contained in the Department's TSEP Application Guidelines prevails.

Section 26. NOTICE

All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

Section 27. NO ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 28. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

Section 29. INTEGRATION

The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein are valid or binding.

Section 30. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning this Contract, venue shall be in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

(Substitute the following for contracts with Tribal governments.)

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribes immunity from suit in State court on any issue specifically arising from this Contract; and
- (c) The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

_____ (Grantee) Department of Commerce

(Chief Elected Official) Anthony J. Preite, Director

Date: _____ Date: _____

ATTACHMENT A

IMPROVEMENTS QUARTERLY PROJECT IMPLEMENTATION SCHEDULE

TASK	QUARTERS, 20__				QUARTERS, 20__			
	1st J F M	2nd A M J	3rd J A S	4th O N D	1st J F M	2nd A M J	3rd J A S	4th O N D
<u>PROJECT START UP</u>								
Attend Grant Admin. Workshop								
Sign TSEP Contract								
Prepare Management Plan								
Establish Project Files								
Submit Signature & Depository Forms								
Submit Budgetary Resolution								
<u>PROJECT DESIGN</u>								
Advertise for & Select Engineer								
Commence Final Design								
Complete Project Design								
Submit Plans to DEQ								
Prepare Bid Documents								
Finalize Acquisition								
<u>ADVERTISEMENT FOR CONST. BID</u>								
Review Contract Requirements								
Public Bid Advertisement								
Open Bids & Examine Proposals								
Request Contr. Debarment Review								
Select Contractor & Award Bid								
Conduct Pre-Const. Conference								
Issue Notice to Proceed to Contractor								
<u>PROJECT CONSTRUCTION</u>								
Begin Construction								
Monitor Engineer & Contractor								
Conduct Labor Compliance Reviews								
Hold Const. Progress Meetings								
Final Inspection								
<u>PROJECT CLOSE OUT</u>								
Submit Final Drawdown								
Determine Audit Requirements								
Project Completion Report								
Submit Conditional Certification								
Submit Final Certification								

ATTACHMENT B -- BUDGET FORM FOR MONTANA PUBLIC FACILITY PROJECTS

(DATE:_____)

ADMINISTRATION:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	TOTAL
1. PERSONNEL COSTS							
2. OFFICE COSTS							
3. PROFESSIONAL SERVICES							
4. LEGAL COSTS							
5. AUDIT FEES							
6. TRAVEL & TRAINING							
7. LOAN ORIGATION FEES							
8. LOAN RESERVES							
9.							
10.							
11. TOTAL ADMINISTRATION							
CONSTRUCTION RELATED ACTIVITIES:							
12. LAND ACQUISITION							
13. PRELIMINARY ENGINEERING							
14. ENGINEERING DESIGN							
15. Construction Engineering Services							
16. CONSTRUCTION							
17. CONTINGENCY							
18. TOTAL ACTIVITY							
19. TOTAL PROJECT BUDGET							

